SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 527

THE SIOUX TRIBE OF INDIANS,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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JAMES S. Y. IVINS,
Of Counsel.

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The Sioux Tribe of Indians, by its attorney, Ralph H. Case, prays that a writ of certiorari issue to review the judgment of the Court of Claims (sustaining defendant's motion to dismiss plaintiff's supplemental petition) entered in the above entitled cause on June 28, 1948, Court of Claims Docket Number C-531 (18), (19), (21), (23) and (24), motion for new trial overruled November 1, 1948 (R. 138).

Opinions Below

The opinion of the Court of Claims sustaining dismissal of the supplemental petition is not yet reported in the Court of Claims Reports but appears in 78 Fed. Supp. 793.

It appears in the record at page 129. The previous opinion of the Court of Claims sustaining claims and offsets appears in 105 Ct. Cl. 725, 64 Fed. Supp. 312, Record p. 33.

Jurisdiction

The jurisdiction of this Court is invoked under Section 288(b) of Title 28 of the United States Code as amended May 22, 1939, c. 140 (53 Stat. 752).

Questions Presented

(1) Whether the Court of Claims complied with the requirements of Section 11 of the Act of August 13, 1946, in respect to applying to offsets the test of good conscience in the light of the nature of the claim and the entire course of dealings between the United States and the claimants.

(2) Whether the Court of Claims exceeded its jurisdiction in allowing offsets of expenditures prior to the acts under which the claims arose.

Statutes Involved

Many of the statutes referred to are set out in Appendix B to the petition for certiorari in the companion case, No. 526, filed herewith, and reference thereto is hereby made. Other statutes are shown in the appendix hereto.

Statement

In these cases the Court of Claims has held as a matter of law that several bands of the Sioux Tribe of Indians are entitled to recover, under an accounting for the proceeds of the disposition or sale of lands within their reservations,

and for misappropriation or misapplication of their tribal trust funds, in amounts aggregating $2,423,166.10.[1]

The Court of Claims also held, however, that the defendant was entitled to offset against these awards $4,911,284.22 of "net excess expenditures" determined in the companion case of *Sioux Tribes of Indians* v. *United States*, No. 526, —in which a petition for certiorari is being filed with this one.

If it should be determined in the companion case that the Court of Claims erred in charging "Sioux Benefits" against the Sioux Nation Fund, automatically the offset allowed in this case will disappear and the Sioux bands will be entitled to the amounts previously determined in their favor.

But even if the action of the Court of Claims in the companion case should be affirmed, the allowable offset in this case must be reduced because the jurisdiction of the Court of Claims to allow offsets was restricted by the Act of August 13, 1946, in two respects:

(1) Offsets of gratuities (which the Court of Claims recognizes the offset here to be) were limited to those justified in good conscience in the light of the nature of the claim and the entire course of dealings and accounts between the United States and the claimant, and (2) offsets were not to be made for "expenditures made prior to the date of the law under which the claim arose."

If it is held that the Court of Claims as the keeper of the conscience of the United States should not have allowed the "excess expenditures" of "Sioux Benefits" to offset the claims of the bands for the balances due them in their special

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[1] Case C-531 (18) Rosebud Band $547,347.60
" " (19) " " 338,256.40
" " (21) Crow Creek Band 23,347.60
" " (23) Cheyenne River Band 751,784.25
" " (24) Standing Rock Band 762,430.25

trust funds, the awards totaling $2,423,166.10 should become judgments for plaintiff bands.

Even if it should be held that good conscience justified the offset of "excess expenditures" of Sioux Benefits made since the enactment of the several statutes under which the claims arose, the Act of 1946 specifically disallows as offsets such expenditures made prior to the dates of those laws. Accordingly the $4,911,284.22 "excess expenditures" carried over by the Court of Claims from the companion case must be reduced by at least $2,793,489.54, so expended before the dates of those laws. The portion of the "excess expenditures" disbursed since the enactment of those laws would be at most $2,171,794.68, leaving an aggregate balance in favor of the plaintiff's bands of at least $251,371.42 for which they would be entitled to judgment, with interest.

Reasons for Granting the Writ

I

The Court of Claims first decided this case under the jurisdictional Act of June 3, 1920, which provided for offsets for "all sums heretofore paid or expended for the benefit of said [Sioux] tribe or any band thereof." The question of whether "Sioux Benefits" paid for the benefit of *individuals* is a proper offset is raised in the companion case. Even if gratuitous payments by the United States to individuals were a proper offset under the Act of June 3, 1920, an entirely different question arises under the Act of August 13, 1946, which amended the Act of 1920. Under the amendment, offsets of gratuitous expenditures must be examined from a *conscience* rather than a strictly legalistic angle. Section 11 of the Act of 1946 continues cases pending in the Court of Claims or the Supreme Court at the time of its enactment, saying that they shall not

be transferred to the Commission created by the act to adjudicate Indian claims generally, with a proviso that

> "the provisions of section 2 of this Act, with respect to the deduction of payments, offsets, counterclaims and demands, shall supersede the provisions of the particular jurisdictional Act under which any pending or authorized suit in the Court of Claims has or will be authorized."

Section 2, referred to, provided that

> "the Commission *may* also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it *finds* that the nature of the claim and the *entire course of dealings* and accounts between the United States and the claimant *in good conscience warrants such action, may* set off all *or part of* such expenditures against any award made to the claimant, except[2] * * * (emphasis supplied).

When the Supreme Court remanded this case to the Court of Claims to determine whether the Act of 1946 gives rise to any claims which the petitioner may assert to affect the judgment which had been the subject of a petition for certiorari, the Court of Claims merely reiterated its previous legalistic conclusions and made no new approach in the light of the entire course of conduct, no findings as to what good conscience requires, but merely stated that

> "We find from the record in these cases that the Act of August 13, 1946, does not give rise to any claim or claims which plaintiff may legally, equitably, or in good conscience assert to affect the judgment heretofore entered in these cases on February 4, 1946."

We submit that the remand by the Supreme Court, in using the phrase "claims which the petitioner may assert",

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[2] The exception will be considered below.

was not intended to mean only affirmative demands but included positions which petitioner might take with respect to the offsets *claimed* by the Government. The Court of Claims, using the phraseology of the remand, skips over its *purpose,* which was to reexamine the record in the light of the amended jurisdictional act and make findings with respect to the good conscience not of plaintiff's claims but of defendant's offsets. The attitude of the Court of Claims is that the situation was not changed by the Act of 1946. This is a precedent for all other Indian cases in the Court of Claims, and for the Claims Commission, which must get its law from the Court of Claims (under Section 20 of the Act of 1946).[3] It certainly should be passed on by the Supreme Court so that the Court of Claims, the Indian Claims Commission and the litigant parties may know whether or not the statutory reference to *good conscience* and the *entire course of dealings* means something or is just one more instance of telling the Indians something that sounds favorable and later saying that the words mean something else.

II

The exception in the Act of 1946, where it limited offsets to those justified in good conscience, is

> "except that it is hereby declared to be the policy of Congress that monies spent for * * * expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose * * * shall not be a proper offset against any award."

In plaintiff's brief filed September 8, 1948, the attention of the Court of Claims was called to the fact (of record) that more than half of the offsets carried over by the Court

[3] 60 Stat. 1949.

from the companion case and applied against the awards herein had been expended prior to the enactment of the several laws under which the awards herein arose. There plaintiff showed the Court of Claims:

> "The attention of the Court is invited to the fact that certain specific classifications of offsets or counterclaims are barred by the Act of August 13, 1946. We have reference particularly to expenditures made prior to the date of the laws, treaties, or Executive Orders under which the claims arose.
>
> "The claims in question are those arising out of the sale of so-called surplus land (and may we add at this point that there is no such thing as surplus land) under several acts of Congress.
>
> "A portion of the deficiency judgment has been allocated and charged against trust funds arising under statutes for the sale of lands which statutes were passed after a substantial portion of the expenditures in question had been made. There is an absolute prohibition in the statute against the use of such offsets against an Indian claim (sec. 2 of Act of August 13, 1946).
>
> "We have reference particularly to case No. C-531 (18), Rosebud, Tripp County, Fund, Act of March 2, 1907 (34 Stat. 1230). Prior to the date of this act the evidence in this case (Rep. G.A.O. pp. 321-324) shows the total expenditure under civilization of the Sioux, sec. 17, Act of March 2, 1889, *supra*, over the years from 1894 to 1906, inclusive, was $488,750.98.
>
> "In case No. C-531 (19), Rosebud, Mellette County, Fund, under the Act of May 30, 1910 (36 Stat. 448) the evidence (Rep. G.A.O. p. 324) for the years 1908-9-10 shows that there were corresponding expenditures, which now are part of the deficiency judgment, in the sum of $34,523.62.
>
> "In case No. C-531 (20), Pine Ridge, Bennett County, Fund, arising under the Act of May 27, 1910 (36 Stat. 440) there had been expended in the years 1894 to 1910

the total sum of $756,141.87, (Rep. G.A.O. pp. 306-307) which is now a part of the deficiency judgment.

"In case No. C-531 (21), Crow Creek 4% Fund, arising under the Act of March 2, 1889, *supra*, no expenditures were made for Sioux benefits prior to the date of the act. Note here that the act itself authorized the adjustment of the Sioux Nation Fund and made an appropriation therefor. In consequence there could be no prior expenditures in this particular case.

"In case No. C-531 (22), Lower Brule Trust Fund, arising under the Act of April 21, 1906 (34 Stat. 124), Sioux benefits paid prior to said act (Rep. G.A.O. p. 345) for the years 1894-5-6 were $32,873.98.

"In case No. C-531 (23), Cheyenne River 3% Fund, arising under the Act of May 29, 1908 (35 Stat. 460) as amended by the Act of June 23, 1910 (36 Stat. 602), under which Act the claim arises, Sioux benefits paid prior to June 23, 1910 in the years 1894, 1895, 1899, 1902 and including the year 1910 amounted to $444,-035.78 (Rep. G.A.O. p. 313).

"In case No. C-531 (24), Standing Rock 3% Fund, arising under the Act of May 29, 1908 (35 Stat. 460), as amended and expanded by the Act of February 14, 1913 (37 Stat. 675), under which Act the claim arises, Sioux benefits paid prior to the date of said last act for the years 1894 to 1913 inclusive, amounted to $1,023,-163.31 (Rep. G.A.O. p. 330).

"So far and to the extent above set out the deficiency judgment charged against the several Sioux tribal trust funds is barred by the act. In a previous section, we have asked this Court to strike out the entire deficiency judgment as a matter of equity, good conscience and fair dealing. But in the event our plea fails, still the Court is bound by the statute to set aside so much of the deficiency judgment as is now involved and as is now shown to be expenditures made prior to the date of the law under which the claim arose.

* * * * * * *

"A summary of the foregoing Sioux benefits paid prior to the passage of the statutes giving rise to the present claims, is as follows:

No. C-531 (18)	$ 448,750.98
C-531 (19)	34,523.62
C-531 (20)	756,141.87
C-531 (21)	None
C-531 (22)	32,873.98
C-531 (23)	444,035.78
C-531 (24)	1,023,163.31
Total	$2,739,489.54"

This is a question of the Court's *jurisdiction* of the matter of allowable offsets, under the amended jurisdictional act. It can be raised at any time.[4]

The Court of Claims chose to ignore this point completely, but has assigned no reason.

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[4] *American Hide & Leather Co.* v. *United States*, 284 U. S. 343, 359, and cases there cited.

APPENDIX

Act of June 3, 1920, 41 Stat. 738

That all claims of whatsoever nature which the Sioux Tribe of Indians may have against the United States, which have not heretofore been determined by the Court of Claims, may be submitted to the Court of Claims with the right of appeal to the Supreme Court of the United States by either party, for determination of the amount, if any, due said tribe from the United States under any treaties, agreements, or laws of Congress, or for the misappropriation of any of the funds or lands of said tribe or band or bands thereof, or for the failure of the United States to pay said tribe any money or other property due; and jurisdiction is hereby conferred upon the Court of Claims, with the right of either party to appeal to the Supreme Court of the United States, to hear and determine all legal and equitable claims, if any, of said tribe against the United States, and to enter judgment thereon.

Sec. 2. That if any claim or claims be submitted to said courts they shall settle the rights therein, both legal and equitable, of each and all the parties thereto, notwithstanding lapse of time or statutes of limitation, and any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an offset in such suits or actions, and the United States shall be allowed credit for all sums heretofore paid or expended for the benefit of said tribe or any band thereof. The claim or claims of the tribe or band or bands thereof may be presented separately or jointly by petition, subject, however, to amendment, suit to be filed within five years after the passage of this Act; and such action shall make the petitioner or petitioners party plaintiff or plaintiffs and the United States party defendant, and any band or bands of said tribe or any other tribe or bands of Indians the court may deem necessary to a final determination of such suit or suits may be joined therein as the court may order. Such petition, which shall be verified by the attorney or attorneys employed by said Sioux Tribe or any bands thereof, shall set forth all the facts on which the claims for recovery are based,

and said petition shall be signed by the attorney or attorneys employed and no other verification shall be necessary. Official letters, papers, documents, and public records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said tribe or bands thereof to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys for the said tribe or bands of Indians. * * *

Act of August 13, 1946, 60 Stat. 1049

* * * * * * *

Sec. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after the date of the approval of this Act shall be considered by the Commission.

All claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States.

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U. S. C. sec. 250), as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

* * * * * * *

Sec. 11. Any suit pending in the Court of Claims or the Supreme Court of the United States or which shall be filed in the Court of Claims under existing legislation, shall not be transferred to the Commission: *Provided,* That the provisions of section 2 of this Act, with respect to the deduction of payments, offsets, counterclaims and demands, shall supersede the provisions of the particular jurisdictional Act under which any pending or authorized suit in the Court

of Claims has been or will be authorized: *Provided further*, That the Court of Claims in any suit pending before it at the time of the approval of this Act shall have exclusive jurisdiction to hear and determine any claim based upon fair and honorable dealings arising out of the subject matter of any such suit.

Act of March 2, 1907

An Act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range twenty-five west of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians: * * *

Sec. 5. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation, in the State of South Dakota, the sum of one million dollars, which shall draw interest at three per centum per annum for ten years, the interest to be paid to the Indians per capita in cash annually, share and share alike; that at the expiration of ten years, after one million dollars shall have been deposited as aforesaid, the said sum shall be distributed and paid to said Indians per capita in cash; that the balance of the proceeds arising from the sale and disposition of the lands as aforesaid shall be deposited in the Treasury of the United States to the credit of said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior, and he may, in his discretion, upon an application by a majority of said Indians, pay a portion of the same to the Indians in cash,

per capita, share and share alike, if in his opinion such payments will be for the best interests of said Indians. * * *

Act of May 30, 1910, 36 Stat. 448

An Act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Rosebud Indian Reservation, in the State of South Dakota, lying and being within the counties of Mellette and Washabaugh, south of the White River, and being described and bounded as follows: * * *

Sec. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization. * * *

Act of May 27, 1910, 36 Stat. 440

An Act to authorize the sale and disposition of the surplus and unallotted lands in Bennett County, in the Pine Ridge Indian Reservation, in the State of South Dakota, and making appropriation to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Pine Ridge Indian Reser-

vation, in the State of South Dakota, lying and being in Bennett County and described as follows: * * *

Sec. 7. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums to which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of the said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization. * * *

Act of April 21, 1906, 34 Stat. 124

An Act to authorize the sale of a portion of the Lower Brule Indian Reservation in South Dakota, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of * * * being the western portion of the Lower Brule Indian Reservation in South Dakota, comprising approximately fifty-six thousand five hundred and sixty acres: * * *

Sec. 3. That the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, shall, after deducting the amounts of the expenses incurred from time to time in connection with the appraisements and sales, be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the Lower Brule Reservation, and shall be expended for their benefit, under the direction of the Secretary of the Interior. * * *

Act of May 29, 1908, 35 Stat. 460

An Act to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River

and Standing Rock Indian reservations in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota lying and being within the following described boundaries, to-wit: * * *

Sec. 6. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the reservations aforesaid in the States of South Dakota and North Dakota the sums to which the respective tribes may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians respectively shall be expended for their benefit under the direction of the Secretary of the Interior. * * *

Act of June 23, 1910, 36 Stat. 602

An Act to authorize the Secretary of the Interior to sell a portion of the unallotted lands in the Cheyenne River Indian Reservation, in South Dakota, to the Milwaukee Land Company for town-site purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized, under such rules, regulations, and conditions as he may prescribe, to sell * * * unallotted lands in the Cheyenne River Indian Reservation, in the State of South Dakota, for town-site purposes. * * * the proceeds thereof except as hereinafter provided shall be credited to the Indians in the manner and form prescribed in section six of the Act of May twenty-ninth, nineteen hundred and eight: * * *

Act of February 14, 1913, 37 Stat. 675

An Act to authorize the sale and disposition of the surplus and unallotted lands in the Standing Rock Indian Reservation, in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Standing Rock Indian Reservation, in the States of South Dakota and North Dakota, lying and being within the following described boundaries, to wit: * * *

Sec. 6. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the said reservation, the sums of which the said tribe may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians shall be at all times subject to appropriation by Congress for their education, support, and civilization: *Provided,* That from any moneys in the Treasury to the credit of the Standing Rock Indians derived from the proceeds arising from the sale and disposition of their portion of the surplus and unallotted lands disposed of under section six of the Act approved May twenty-ninth, nineteen hundred and eight, the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to distribute and pay to each of the Indians belonging to said tribe and entitled thereto a sum not exceeding forty dollars per capita. * * *